CF 1602

IN THE HIGH COURT OF JUDICATURE AT BILASPUR [C.G.]

SECOND APPEAL NO. 550 /2005 Single Bench

APPELLANTS PLAINTIFFS :-

1] Bahoran Sharma Son of late Tulsiram Sharma, aged 55 years,

2] Bhupal Sharma S/o late Tulsiram Sharma, aged about 47 years.

3] Sheetalesh Sharma son of Bhaskar Sharma, aged 23 years,

4] Heeramani Sharma son of late Tulsiram Sharma, aged 33 years.

5] Smt. Nandkunvar Sharma, widow of late Tulsiram Sharma, aged 75 years.

No. 1 to 5 residents of village Parsada, Tahsil and District Bilaspur [C.G.].

6] Smt. Revati Bai W/o Chhannu D/o late Tulsiram Sharma, aged 57 years, R/o Majhgaon Tahsil Lormi, District Bilaspur [C.G.].

7] Smt. Bhanu Bai Widow of late Sitaram Sharma D/o late Tulsiram Sharma, aged 53 years, R/o Chantidih, Bilaspur [C.G.].

8] Ram Sharan Sharma aged 43 years, S/o Late Dambhoj Sharma.

9] Jageshwar Prasad Sharma, aged 28 years, S/o late Dambhoj Sharma.

10] Smt. Chitrekha Bai aged 62 years, widow of late Dambhoj Sharma.

Nos. 8 to 10 R/o village Parsada, Tahsil and District Bilaspur [C.G.].

P.R. No. 2316/05 Presented by Shri Amit Kumar dated 16/11/05

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11] Uttara Bai Vyas widow of late Kamalkar Vyas D/o late Dambhoj Sharma, R/o Village Nariyara, Tahsil Pamgarh, District Janjgir-Champa [C.G.]

12] Smt. Heerabai Pandey W/o Sanat Kumar Pandey, D/o late Dambhoj Sharma R/o Maharana Pratap Nagar, Tifra, Bilaspur [C.G.].

13] Smt. Neera Vyas W/o Diwakar Vyas, aged 36 years, D/o late Dambhoj Sharma, R/o Balco Nagar, Korba, District Korba [C.G.].

14] Ramkhilawan Sharma, aged 45 years, S/o Puranjai Sharma.

15] Shatruhan aged 42 years, S/o Puranjai Sharma.

16] Narendra Sharma, aged 39 years, S/o Puranjai Sharma.

17] Heynath Sharma aged 27 years, S/o late Puranjai Sharma.

18] Smt. Lalmati Sharma aged 62 years, widow of late Puranjai Sharma.

No. 14 to 18 all resident of village Parsada, Tahsil and District Bilaspur [C.G.].

19] Smt. Chanda Bai aged 48 years, widow of late Arjun and D/o late Puranjai Sharma.

20] Smt. Nirmala Bai wife of Ashok Kumar D/o Late Puranjai Sharma.

Nos. 19 and 20 both residents of village Mulmula District Janjgir-Champa [C.G].

21] Smt. Mutana Bai aged 80 years, widow of late Laxmi Prasad Vyas, D/o late Surajman Prasad R/o Vyas Nagar, District Janjgir-Champa [C.G.].

22] Smt. Umeda Bai aged 64 years, Widow of Nirbhai Prasad D/o Surajman Prasad R/o village Karesara, Tahsil Mungeli, District Bilaspur [CG]

VERSUS

RESPONDENTS DEFENDANTS :-

1] Smt. Khorbaharin Bai, aged 65 years, Widow of late Bhuneshwar Prasad R/o village Parsada, at present R/o Mungeli, Padavpara, District Bilaspur [C.G.].

2] State of Chhattisgarh, Through- Collector, Bilaspur [C.G.].

SECOND APPEAL UNDER SECTION100 OF CIVIL PROCEDURE CODE 1908

HIGH COURT OF CHHATTISGARH, BILASPUR

SECOND APPEAL No. 550/2005

Bahoran Sharma and others

Vs.

Smt. Khorbaharin Bai and another

Apperance : Shri A.Kumar, counsel for the appellants.

ORAL ORDER
(10.7.2006)

Sunil Kumar Sinha, J.

(1) This appeal is directed against the judgment and decree dated 3.9.2005, passed in Civil Appeal No. 4-A/2004 by the Additional District Judge, Bilaspur arising out of the judgment and decree dated 29.12.2003, passed in Civil Suit No. 47-A/2002 by the 7th Civil Judge Class-II, Bilaspur. The plaintiffs, who are the appellants herein, lost in both the Courts.

(2) The plaintiffs filed a suit for declaration that the suit lands be declared the lands of joint ownership of the plaintiffs only and the defendant No.1 be restrained from alienating the aforesaid property and she be further restrained from interfering with the joint possession of the plaintiffs in the said property. The plaint allegations are that the suit properties were acquired by one Surajman Prasad. Surajman Prasad died and the plaintiffs are his successors. Defendant No.1 is the wife of one of the sons of Surajman Prasad namely-Bhuneshwar Prasad. It is specifically pleaded vide para 4 of the plaint that prior to his death Bhuneshwar Prasad stated that defendant No.1 will only have a right of maintenance in these properties and she will not be

entitled to get any share in the same. Their contention was that this statement, orally made by Bhuneshwar Prasad, was a Will of Bhuneshwar Prasad and according to that defendant No.1 will get no absolute right or successory right in the suit properties and she will only get a right of maintenance in the same.

(3) The trial Court framed various issues in this case and after recording evidence of the parties, dismissed the suit of the plaintiffs, holding that according to the Hindu Succession Act, 1956, defendant No.1 will have a right of partition in the aforesaid property. It was also held that there cannot be an oral Will, as pleaded by the plaintiffs and the said pleadings pertaining to the alleged oral Will by Bhuneshwar Prasad was rejected. Against the aforesaid judgment and decree, passed by the trial Court, the plaintiffs filed an appeal before the lower appellate court. The lower appellate court also took the similar view and dismissed the appeal, confirming the judgment and decree passed by the trial Court. It is against this judgment and decree passed by the lower appellate court, the plaintiffs have filed this Second Appeal.

(4) Learned counsel for the appellants argues that in the normal course of succession, as per the provisions of Hindu Succession Act, 1956, defendant No.1 will get a right in the suit properties being the widow of son of the original holder namely-Bhuneshwar Prasad. His submission is that the Courts below, while rejecting the contention of the plaintiffs that the suit properties were the properties of joint ownership and possession of the plaintiffs, should have passed a decree in their favour, ascertaining their rights and saying that defendant No.1 is also the joint owner and the suit of the plaintiffs should not have been dismissed.

(5) This contention raised by learned counsel for the appellants cannot be accepted. When the plaintiffs had pleaded and asserted their absolute right in the suit properties, excluding the right of

defendant No.1 on account of the so called oral Will of Bhuneshwar Prasad (husband of defendant No.1) then the Courts below, while rejecting the plea of oral Will, have rightly taken this view that the suit was liable to be dismissed for the relieves claimed by the plaintiffs. In fact, it was the suit based upon the contentions and the pleadings of so called Will and if the suit fails on that count, it was liable to be dismissed only.

(6) Moreover, the Courts below have not ascertained shares in the suit properties and it is only said that defendant No.1 is entitled to affect partition to the extent of the share of her husband- Bheneshwar Prasad.

(7) There is no infirmity in the findings recorded by the two Courts below. No substantial question of law is involved in this appeal. The appeal has no merit. The same is dismissed at the motion stage itself.

Sd/-
Sunil Kumar Sinha
Judge

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